

Note: The California ABLE Act board has illustrated adoptions in the following manner: text proposed to be added is underlined.

### **California Code of Regulations**

#### **Title 10: Investments**

#### **Division 1: California Achieving a Better Life Experience (ABLE) Act Board**

#### **Chapter 14: California Achieving a Better Life Experience (ABLE) Program Trust**

#### **Section 9000. Existing Definitions**

All meanings of the terms defined in Welfare and Institutions Code section 4875 and Internal Revenue Code section 529A apply wherever the same terms are used throughout this Chapter.

NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4875, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

#### **Section 9001. Additional Definitions.**

The following definitions shall also apply wherever the terms are used throughout this Chapter:

- (a) “ABLE Plan” or “Plan” means the qualified ABLE program established and maintained by the State of California, in accordance with Internal Revenue Code section 529A.
- (b) “Account Owner” means the Eligible Individual for whom the Account is established. The Account Owner is the Designated Beneficiary.
- (c) “Authorized Legal Representative” means a person who may act on behalf of the Account Owner with respect to the account if the Account Owner (1) is unable to exercise signature authority over his or her account, or (2) chooses not to exercise signature authority over his or her account. The Authorized Legal Representative may be a parent or legal guardian of the Account Owner or may be a person granted a valid durable power of attorney to manage banking and investment matters on behalf of the Account Owner and to take all necessary actions on behalf of the Account Owner with respect to the account.
- (d) “Cash” includes checks, money orders, funds transferred through rollover distributions, payroll deduction plans, automatic contribution plans, and electronic fund transfers.
- (e) “Contribution” means cash deposited into an account.
- (f) “Distribution” means any disbursement from an account.
- (g) “Earnings” means the total account balance on a particular date minus the contributions to the account as of that date.
- (h) “IRC” means the Internal Revenue Code.

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2 (i) “Nonqualified Distribution” means a disbursement that is not used for Qualified Disability  
3 Expenses or is not a rollover to another qualified ABLE program or account.  
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5 (j) “Program Administrator” means the California ABLE Act Board.  
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7 (k) “Secretary” means the Secretary of the United States Treasury.  
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9 (l) “SSA” means the Social Security Administration.

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11 NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875  
12 and 4877, Welfare and Institutions Code; Section 529A, Internal Revenue Code.  
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15 **Section 9002. Account Enrollment**

16 (a) **Account Owner and Designated Beneficiary.** A person may open an account if that  
17 person is an Eligible Individual who is both the Account Owner and the Designated  
18 Beneficiary.  
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20 (b) **Participation Agreement.** An Eligible Individual or the Eligible Individual’s Authorized  
21 Legal Representative must submit a completed and signed Participation Agreement in  
22 order to open an Account. The Participation Agreement governs the Account Owner’s  
23 use of the Account. The Participation Agreement shall include, at a minimum, the  
24 following terms and conditions:  
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- 26 (1) Representations and warranties regarding eligibility, intentions as to account use,  
27 and understanding of the investment options selected.  
28 (2) Acknowledgement regarding contribution limits.  
29 (3) Treatment of withdrawals, transfers, and excess contributions.  
30 (4) Acknowledgement of risks, including no guarantees on returns or account value, no  
31 proxy rights on investments, future legislative changes, and future ABLE Plan  
32 changes.  
33 (5) Potential for Medicaid/Medi-Cal recapture upon death of beneficiary.  
34 (6) Dispute resolution.  
35 (7) Indemnification and hold harmless of the ABLE Plan for any breaches of  
36 representations or factual misstatements.  
37 (8) Governing law, venue, and jurisdiction.  
38 (9) Certification that the person seeking to open an account does not have another  
39 qualified ABLE program account in any state (except in the case of a Rollover). An  
40 Account Owner may not have more than one qualified ABLE program account in  
41 existence in any state at the same time. A qualified ABLE program account  
42 previously opened and closed in any state does not prohibit the subsequent creation  
43 of an ABLE Account for the same Account Owner.

- 1       **(10)**   Certification that the person seeking to open an account is an Eligible Individual  
2       as defined in IRC section 529A, and evidence of eligibility, such as a disability  
3       certification as defined in IRC section 529A, can and will be submitted upon request.  
4       **(11)**   Other terms and conditions that may be required by the Program Administrator.  
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6   NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875,  
7   4877, 4878, and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.  
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#### 10   **Section 9003. Limitations on Contributions**

- 11       **(a) Annual Contribution Limit.** IRC section 529A limits the amount that can be  
12       contributed annually to an ABLE Account to the federal gift tax exclusion. This limit is  
13       applied per account from all sources. The annual limit may increase as the federal gift  
14       tax exclusion increases.  
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16       **(b) Maximum Account Balances.** IRC section 529A limits the total amount of contributions  
17       to an ABLE Account. The account balance may not exceed the amount established by  
18       the State in accordance with IRC section 529(b)(6) regarding qualified tuition programs.  
19       Accounts that have reached the maximum account balance may continue to accrue  
20       earnings and, if the account balance falls below the permitted maximum account  
21       balance, contributions may recommence.  
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23       **(c) Excess Contributions.** The Program Administrator will not knowingly accept  
24       contributions that would cause an account to exceed the annual contribution limit or  
25       permitted maximum account balance.  
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27       **(d) Return of Excess Contributions.** Contributions shall be returned to the extent that the  
28       amount of the contribution would cause the aggregate amount held for a Designated  
29       Beneficiary to exceed the annual contribution limit or permitted maximum account  
30       balance.  
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32   NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877  
33   and 4879, Welfare and Institutions Code; Section 529A, Internal Revenue Code.  
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#### 36   **Section 9004. Change of Designated Beneficiary**

- 37       **(a) Change of Designated Beneficiary.** An Account Owner may change the beneficiary  
38       designated at any time as long as the individual is an Eligible Individual and a Member of  
39       the Family of the current Designated Beneficiary. The individual designated to be the  
40       new beneficiary shall become the new Account Owner after completing the account  
41       enrollment process under section 9001.  
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43       **(b) Change Through Rollover Distribution.** A change of Designated Beneficiary may also  
44       be accomplished at any time by means of a rollover from a different account within the

1 Plan or another qualified ABLE program. The individual designated to be the new  
2 beneficiary must be an Eligible Individual and a Member of the Family of the current  
3 Designated Beneficiary, and shall become the new Account Owner after completing the  
4 account enrollment process under section 9001.

5 NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877,  
6 Welfare and Institutions Code; Section 529A, Internal Revenue Code.

## 9 **Section 9005. Qualified Distributions**

11 **(a) Qualified Distributions.** Distributions from an account must be used to pay for  
12 Qualified Disability Expenses as defined in Welfare and Institutions Code section 4875(l)  
13 and IRC section 529A.

15 **(b) Nonqualified Distributions.** Any withdrawal that is not (1) used to pay the Qualified  
16 Disability Expenses of the Account Owner or (2) rolled over to another qualified ABLE  
17 program for the same beneficiary or for another Eligible Individual who is also a Member  
18 of the Family of the beneficiary is a Nonqualified Distribution. The earnings portion of  
19 Nonqualified Distributions may be subject to federal and state income tax. Additionally,  
20 Nonqualified Distribution may impact benefit eligibility and benefit amounts.

22 NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4875,  
23 4877, and 4878, Welfare and Institutions Code; Section 529A, Internal Revenue Code.

## 26 **Section 9006. Rollover Distributions**

27 **(a) Rollover Distributions Generally.** An Account Owner may direct a rollover once in  
28 every rolling twelve-month period for the same Account Owner.

30 **(b) Rollover Distribution Deposit Timeframe.** A distribution that is made for purposes of  
31 a rollover must be deposited to the different account within the Plan or another qualified  
32 ABLE program within 60 days of the distribution. Failure to deposit a rollover  
33 distribution within 60 days will result in the distribution being treated as a Nonqualified  
34 Distribution.

36 **(c) Rollover Documentation.** A rollover directly to or from another qualified ABLE  
37 program must be accompanied by a written statement from the applicable qualified  
38 ABLE program identifying the portion of the rollover that represents contributions and the  
39 portion that represents earnings. Failure to provide this information may result in the  
40 deposit being treated as earnings.

42 **(d) Closure of Accounts.** The account from which funds are rolled over for the same  
43 Account Owner must be closed within 60 days after the distribution.

1       **(e) Execution of New Participation Agreement.** Any rollover to a new account not yet  
2       established under the ABLE Plan shall not be effective until the Eligible Individual or the  
3       Eligible Individual's Authorized Legal Representative has submitted a completed and  
4       signed Participation Agreement for the new account and the account has been  
5       established by the Program Administrator.  
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7       NOTE: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Section 4877,  
8       Welfare and Institutions Code; Section 529A, Internal Revenue Code.  
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## 10       **Section 9007. Account Information**

11       **(a) Quarterly Report to Designated Beneficiary.** Each Account Owner will receive a  
12       quarterly statement from the ABLE Plan with, at a minimum, the following information:  
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14               **(1)** Contributions to each investment option during that quarter and aggregate  
15               contributions, if any, for the year-to-date.

16               **(2)** Distributions from each investment option during that quarter.

17               **(3)** The total value of the Account at the end of the quarter.  
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19       **(b) Information Security.** Any information compiled pursuant to this section and Welfare  
20       and Institutions Code section 4875 et seq. shall be maintained by the Board and  
21       protected consistent with the requirements of the Information Practices Act of 1977 (Civil  
22       Code section 1798 et seq.).

23       Note: Authority Cited: Section 4882, Welfare and Institutions Code. Reference: Sections 4877  
24       and 4881, Welfare and Institutions Code; Section 529A, Internal Revenue Code.